

REMARKS

Applicants present claims 13, 15, 16, 17 and 21-25. Claim 13 is amended, claim 14 is canceled, claim 15 is amended, claims 18-20 are canceled, claim 21 is amended, and non-elected claim 26 is canceled.

Amended claim 13 refers to an “inner pouch” of the multi-wall sack as made from a “polymeric material” and refers to the “outer bag” as made from a “paper-based material”. The inclusion of the subject matter of claim 14 into claim 13 means that claim 13 now defines that the amount and/or the type of pressure adhesive and the location of the pressure adhesive are selected so that the adhesion of the inner pouch to the outer bag is greater on one of a front or a rear side of the sack than on the opposite side of the sack so that, after heat sealing the inner pouch closed, the front and rear sides of the outer bag can be folded outwardly with the sealed inner pouch being selective detached from one of the sides of the outer bag and being retained by the other side of the outer bag.

Applicants traverse all rejections. Claims 13-21 define novel invention over U.S. Patent 5,007,233 (Bose); claims 22 and 23 define unobvious inventions over Bose in view of U.S. Patent 5,350,239 (Strand); and claims 24 and 25 define unobvious inventions over Bose in view of U.S. Patent 5,836,444 (Hoevel).

In rejecting claims 13-21 under Section 102(b) over Bose, the Office Action construed “adhesive” broadly, whereas amended claim 13 refers to a pressure adhesive. This responds to the Office Action at the bottom of page 3.

The Office Action also states that “Bose discloses an as-manufactured multi-wall sack that comprises an inner pouch and an outer bag, with the sack having a top end that (a) is open in the as-manufactured form of the sack (as manufactured form before closing)

so that the sack can be filled with product via the open end and (b) is formed so that it can be closed to form a top block end (sack taught by Bose clearly “can be closed” by a top end block), and wherein, in the as-manufactured form of the sack, the sack comprises pressure adhesive (green tack 18 resists pressure of filled bag from falling as described by specification.”

The Office Action offers the further explanation – an interpretation for the rejection:

[t]he examiner has interpreted the amount of adhesive (18) taught by Bose to more strongly adhere the inner bag to the outer bag on the sides with adhesive than the opposing sides without adhesive, which have an amount of no adhesive.

Office Action, page 5. Applicants respectfully request reconsideration and withdrawal of the rejection, including the rationale, as well as the Bose reference.

Applicants point out that as amended, claim 13 clarifies that the front and rear sides of the outer bag are each folded outwardly in opposite directions and that the greater adhesion of the inner pouch to one of the sides of the outer bag means that the folding operation causes the inner pouch to be selectively detached from the side of the outer bag that has less adhesion to the inner bag. The requirement in claim 13 that there are different adhesion characteristics of the pressure adhesive on the two sides of the sack means that the claimed sack is a quite different arrangement to that described by Bose.

Contrary to the Office Action, in Bose the basic construction of the multiwall bag 10 and the operation of the ultrasonic welding means 19 shown diagrammatically as arrows in Figure 4 results in the same amount of “green tack” 18 on both sides of the bag 10:

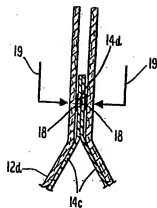


Fig. 4

Applicants' invite attention to Bose, column 3, line 29 to column 4, line 12. Consequently, there would be no selective separation of the green tack 18 on one side or the other side of the bag 10 if the sides of the bag were each folded outwardly in opposite directions. Moreover, Bose neither discloses nor suggests such a folding operation.

In Bose, the upper section of the bag 10 is folded over to one side only – see Figure 5:

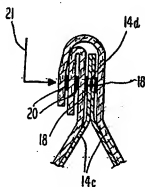


Fig. 5

Moreover, because the adhesive characteristics of green tack 18 on both sides of the bag 10 are the same, the Bose bag is not adapted to be folded outwardly and to separate as required by claim 13.

Therefore, the structural requirement of amended claim 13 that the amount and/or the type of pressure adhesive be selected so that the adhesion of the inner pouch to the outer bag is greater on one of the front or the rear side of the sack than on the opposite side of the sack is neither disclosed nor suggested in Bose. The difference in structure has a significant impact on the resultant as-manufactured sack.

Applicants accordingly submit claims 13, 15, 16, 17, and 21 define novel inventions over Bose.

Claims 22-23 define unobvious inventions over Bose and Strand, and claims 24-25 define unobvious inventions over Bose and Hoevel.

An obviousness rejection does not follow from simply finding various elements in the various separate references. As the Supreme Court recently stated, “a patent composed of several elements is not proved obvious merely by demonstrating that each of its elements was, independently, known in the prior art.” *KSR Int’l Co. v. Teleflex, Inc.*, 550 U.S. 398, 418 (2007). *KSR* (550 U.S. at 418) further states:

[I]t can be important to identify a reason that would have prompted a person of ordinary skill in the relevant field to combine the elements in a way the claimed new invention does. This is so because inventions in most, if not all, instances rely upon building blocks long since uncovered and claimed discoveries almost of necessity will be combinations of what, in some sense, is already known.

An obviousness rejection requires articulated reasoning with a rationale basis. As stated in *KSR*, “[R]ejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some

rational underpinning to support the legal conclusion of obviousness: (quoting *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006).” *KSR*, 550 U.S. at 418. In other words, “[A] rejection based on Section 103 clearly must rest on a factual basis, and these facts must be interpreted without hindsight reconstruction of the invention from the prior art.” *In re Warner*, 379 F.2d 1011, 1017 (CCPA 1967).

In the present case, Bose discloses and teaches a bag that does not and cannot provided the functional/structural benefit’s of a bag as defined in claim 13. Strand would not have suggested changing the function/structure of Bose’s bag contrary to what Bose suggests, whereby claim 13 would not have been suggested by their combination. More particularly, the structural requirement of amended claim 13 that the amount and/or the type of pressure adhesive be selected so that the adhesion of the inner pouch to the outer bag is greater on one of the front or the rear side of the sack than on the opposite side of the sack has a significant impact on the resultant as-manufactured sack that is neither disclosed nor suggested in Bose. Those functional/structural elements would not have been suggested by Stand, nor would reconstructing Bose to include have been suggested. Thus the dependent claims 22-23 would not have been suggested either.

Hoeval would not have suggested changing the function/structure of Bose’s bag contrary to what Bose suggests, whereby claim 13 would not have been suggested by their combination. More particularly, the structural requirement of amended claim 13 that the amount and/or the type of pressure adhesive be selected so that the adhesion of the inner pouch to the outer bag is greater on one of the front or the rear side of the sack than on the opposite side of the sack has a significant impact on the resultant as-manufactured sack that is neither disclosed nor suggested in Bose. Those functional/structural elements would not have been suggested by Hoeval, nor would reconstructing Bose to include have been suggested. Thus the dependent claims 24-25 would not have been suggested either.

The Examiner is encouraged to telephone the undersigned with any suggestions, comments or questions concerning this application.

A notice of allowance is courteously solicited for claims 13, 15-17, and 21-25.

To the extent necessary, Applicants hereby request any required extension of time not otherwise requested and hereby authorize the Commissioner to charge any required fee not otherwise authorized, including application processing, extension, extra claims, statutory disclaimer, issue and publication fees, to Deposit Account No. 06-1135 regarding Order No. 7383/88167.

Respectfully submitted,

FITCH, EVEN, TABIN & FLANNERY

/Kendrew H. Colton/

Kendrew H. Colton

Registration No. 30,368

OFFICIAL CORRESPONDENCE TO
Customer No. 42798

FITCH, EVEN, TABIN & FLANNERY
One Lafayette Center
1120 20th Street, NW, Suite 750 South
Washington, DC 20036
Tel: (202) 419-7000
Fax: (202) 419-7007